

Date: July 25, 2006

Index Title: Charge Back Rate for Individuals Residing at a
State Center for persons with a Developmental Disability
Supersedes 96-03, 97-05, 99-10, and 99-10A

To: Listserv

For: Area Administrators / Human Services Area Coordinators
Bureau Directors
County Departments of Community Programs Directors
County Departments of Developmental Disabilities Services Directors
County Departments of Human Services Directors
County Departments of Social Services Directors
Licensing Chiefs / Section Chiefs
Tribal Chairpersons / Human Services Facilitators

From: Sinikka Santala
Administrator



Document Summary

This memo revises memo series 99-10A, and provides new procedures and updated information regarding the \$48.00 a day charge back rates for individuals residing at a state center for persons with developmental disabilities, and will be effective on June 1, 2006. It describes increased expectations for guardian interaction, and expands criteria for granting appeals based on guardian resistance to considering community placement. Guardians are expected to be knowledgeable and involved in the life of the person to be able to make decisions on their behalf, regarding living in the most integrated setting. Guardians need to maintain active involvement and annually state their reasons for being hesitant about relocating the person to a community based setting. Counties may still avoid charge back when guardians are resistive, if new criteria are met.

Background

The philosophical and programmatic approach of the Division of Disability and Elder Services (DDES) is that individuals with developmental disabilities and their guardians should have real choices about where and with whom they live and what kind of services they receive. It is also the legal obligation of the Division to ensure that individuals with disabilities have opportunities to live in the most integrated community settings. We want to ensure that individuals who reside at the State Centers for persons with developmental disabilities have these opportunities. One way to do this is to conduct regular reviews of community care needs and costs of residents who still live at the Developmental Disabilities (DD) Centers. Counties are expected to pursue community placements of all state DD Center residents with cooperation and involvement of parents/guardians. **Previously, implementation of the chargeback was waived upon evidence of guardian non-acceptance of community placement.** It is the intent of DDES to continue charging counties \$48 per day for individuals who remain in a state Center, unless sufficient documentation is presented that demonstrates that the guardian is actively involved in the life of their ward, and has current knowledge of community residential options and available supports and services.

Authority

The Department of Health and Family Services has implemented a charge back to the county agency for \$48.00 a day, since 1996.

This applies to an individual residing at a state center for persons with developmental disabilities who is also eligible to receive Home and Community Based services and supports, and for whom there is adequate state and federal funding to provide such community services. Authority for this exists in s. 51.437(4rm) 3, Wis.Stats. The charge back is considered in conjunction with each biannual Utilization Review conducted at each Center by an independent professional review team.

(1) "County agency" means one of the following:

(a) A county department of developmental disabilities services established under s. 51.437, Stats.

(b) A county department of community programs established under s. 51.42, Stats., or, if under s. 51.437(4g)(b), Stats., the county board of supervisors has transferred the powers and duties of the county department of developmental disabilities services to the county department under s. 51.42, Stats.

(c) A county department of human services established under s. 46.23, Stats.

(2) "Department" means the Wisconsin Department of Health and Family Services.

(3) "Independent professional review" means an on-site utilization review that occurs at least every six months of each person residing at a state center for persons with developmental disabilities by one or more independent professional review teams under 42 USC 1396a(a)(31) and 42 CFR 456 Subpt. F.

(4) "Medical Assistance" (MA) means the assistance program operated by the department under ss. 49.43 to 49.47 and 49.49 to 49.497, Stats.

(5) "Eligible for home and community based waivers" means an individual residing at a state center for persons with developmental disabilities whose care needs are deemed by an independent professional review as allowable for continuing to receive MA/Title XIX care and treatment in the institution, while also being considered and eligible to receive community based services and supports through the State's Community Integration Program (CIP1A).

(6) "Secretary" means the head of the department or designee.

(7) "State center for the developmentally disabled" or "center" means a department-operated residential institution or intermediate care facility (ICF) providing care of persons with a developmental disability.

Independent Professional Review Process

The independent professional review is completed every six months at each Center by an external team consisting of a physician and Qualified Mental Retardation Professional (QMRP). The Division of Disability and Elder Services' standardized Utilization Review (UR) system will generate information to be reviewed by this external team in developing their determination. The independent professional review team under 42 USC 1396 a (a)(31)(A) and 42 CFR 456 Subpt. B, determines whether a person is appropriate for continued stay at the State Center, and because this status also makes them eligible to receive home and community based services through CIP1A waiver, implies the need for initiating transitional planning.

Costing Out Process

Estimated support needs of each person currently living in the Center is based on availability of county-specific services and historical average costs, in specific program categories, as submitted to the Human Services Reporting System (HSRS) by each county. Given the differences in needs and costs among individuals, conservative cost estimates have been made in order to focus on individuals who are clearly able to return to their communities with available state and federal funding.

Counties may find it useful to update (or complete) a Long Term Care Functional Screen for each person residing in a DD Center, in order to arrive at a standardized description of each person's needs and functioning levels, that are consistent with individuals residing in community settings.

Notification to Counties

County agencies will receive written notification of each individual's charge back status, as determined by the independent professional review team, within 45 calendar days of the completion of each biannual utilization review and when community support costs are projected to be within the level of available state and federal funding. This "letter of intent to chargeback" will serve as the formal notice to the county agency of the intent to charge \$48.00 a day. This notification will occur each time an individual is found able to return to their community with available state and federal funding.

Appeal Process

The process for appealing the determination of the independent professional review is under Chapter HFS 86 of the Wisconsin Administrative Code (Appealing Independent Professional Review Determinations at the State Centers for persons with developmental disabilities). This section provides the exclusive procedure through which a county agency may appeal an independent professional review determination that would result in billings. The appealed decision, under this section, is final and not subject to further hearing, appeal or judicial review.

A county agency must file a written appeal to the Administrator of the Division of Disability and Elder Services (DDES) within 60 calendar days of formal notice to the county agency of the intent to charge back \$48.00 a day of the full Medical Assistance rate (100%). An appeal may be filed by mailing it to: Administrator, DDES, 1 West Wilson Street, Room 418, P. O. Box 7851, Madison, Wisconsin 53707-7851. An appeal is considered filed upon receipt. No appeal will be considered if submitted later than the prescribed 60-day appeal time period. Each county is responsible for knowing each guardian's degree of involvement with the individual ward and their preference for community placement for their ward and to proceed as directed by that knowledge in a timely manner within this 60-day period. DDES may grant extensions to appeals, under special circumstances. (For example, lack of staff, due to significant turnover to prepare appeals, would be an example of when a county could ask for a 60-day extension.)

Criteria for Appealing Chargebacks

Counties should submit associated documentation for each selected type of appeal per individual per utilization review (UR) (charge back cycle). Counties can appeal the chargeback based on parent(s)/guardian resistance to placing the person in the most integrated community setting, or if the community support plan cost exceeds the current available funding.

Every written appeal must contain all of the following:

1. A copy of the court order from the most recent Watt's review;
2. A written description of the basis upon which the county agency contests the Independent Professional Review determination or the daily \$48.00 chargeback billing decision; and
3. Any other documentary evidence the county agency wishes to submit in support of the appeal.

Guidelines for Appealing Based on Guardian Resistance

The county agency must also provide the following **additional** documentation at the time of an appeal based on the parent(s)/guardian resistance to considering community placement:

- A) A written statement, signed by the parent/guardian within the last 12 months, stating the reason(s) for their opposition and/or hesitancy in considering community placement. This statement may be in any form which a county deems appropriate;
- B) Documented descriptions of actions taken by the county agency to ensure that the parent(s)/guardian has current knowledge of community service and support options; and
- C) Documented descriptions of guardian involvement that is sufficient to reasonably believe that they are well aware of their ward's needs and strengths to make decisions that are related to that individual's current needs.

The parent/guardian can make the best decisions and fulfill their responsibilities when they have accurate and current knowledge of the full range of possible residential options and community supports. Sufficient knowledge is attained when the parents/guardians have current, appropriate information about community options.

Written documentation/evidence of this knowledge would typically include **at least two** of the following, which have occurred within the previous 12 months:

- Parent/guardian (and, if appropriate, the individual consumer) has visited one or more potential community residential settings.
- Parent/guardian (and, if appropriate, the individual consumer) is aware of the current community supports and options available, to allow the individual to successfully transition to community residential living. *Note: This may include such things as receiving descriptions of health care options, lists of residential providers or day service programs, which may be sent by counties or providers.*
- Parent/guardian (and, if appropriate, the individual consumer) has engaged in discussions with county personnel (e.g., direct caregivers, support services coordinator, human service directors) about the feasibility of any special environmental or personalized adaptations, and individual's preferences that would be necessary for a successful transition.
- Parent/guardian (and, if appropriate, the individual consumer) is accompanied by officials from the State Center, the county and/or community residential provider(s) when they visit any community residential setting. The results of the visit are documented in county files and included in the request to waive the county chargeback.

Written documentation that is sufficient evidence of parental/guardian involvement would typically include **at least two** of the following, which have occurred within the past 12 months:

- Parent/guardian has visited the individual at the DD Center.
- Parent/guardian has made telephone calls, emails, letters, and/or meetings with the individual and/or professionals from the Interdisciplinary Team.
- Individual has completed a home/family visit.
- Parent/guardian has participated in the person's most recent Annual Review process.
- Parent/guardian has initiated contact with their ward at the time of an important life event. *Note: This may include the individual's birthday, graduation, events of religious/spiritual significance, a new job, a move, or other important life events that have been acknowledged with a card, letter, call or some other appropriate form of recognition. Documentation of the above can be in the form of copies of informal case notes, email, and etc.*

Appeal Review Process

The appeal will be reviewed by a team consisting of representatives of DDES, as delegated by the Administrator. These individuals shall make a recommendation relevant to the validity of the appeal to the Administrator of the Division of DDES.

The appeal will be decided by the Administrator of DDES, or a designee. The basis for the decision will be solely on any written material submitted by the county agency; except that the Administrator, or individual(s) delegated to the appeal review, may consult with one or more members of the independent professional review team, center staff, or other individuals familiar with the particular individual, regarding any issue raised by the county agency. The Administrator will issue the appeal decision in writing within 45 calendar days of receipt of appeal.

In cases where the Administrator does not grant the appeal, or if the county agency did not appeal the decision, the Department shall proceed to bill the county agency for \$48.00 a day of the full (100%) rate paid by Medical Assistance for the person residing at the Center.

The Department will notify the county by a formal **notice of intent to bill**. Billing will begin 180 calendar days from the date the formal notice is received by the county agency from the Department. (Note: the 180 calendar days **does** include the time covered during the actual appeal process.)

In cases where the Administrator grants the county's appeal, the county agency will not be billed, until the next UR cycle, at which time the conditions for implementing a chargeback will be reviewed again, after a determination is made by the individual review team.

An appeal based on parent(s)/guardian resistance to placement may be postponed if the next Watts review will occur before the charge back begins. If, at the hearing, the court orders the person to remain at a Center, the appeal would be granted. If the court ordered the person to return to the community, the 180-day period would begin on the date of the court's notice to the county agency.

The county agency is expected to be proactive and ask for a court hearing, if necessary (Watts review). The county agency is also responsible to provide documentation to the Administrator, Division of Disability and Elder Services, as to the results of the Watts review within 30 calendar days following the Watts review. The county is responsible to submit, in writing, any changes in the court date for the Watts review. Without any type of notification to the Division, or requests for a billing extension, billing will start 180 calendar days from the county's originally submitted court date. This documentation will be submitted to the Division of Disability and Elder Services, Bureau of Long Term Support, Attn: Developmental Disabilities Services Section, 1 W. Wilson Street Room 418, PO Box 7851, Madison, Wisconsin 53707-7851.

If the Watts review is scheduled to occur during the next UR charge back cycle, no additional notice(s) will be sent to the county. No billing responsibility is incurred by the county during that time until the Watts review occurs.

Each county can choose to appeal or not appeal for one or both of the appeal reasons, within the prescribed 60-day period following each UR charge back cycle. If a county chooses not to appeal, that same county could exercise its right to appeal following the receipt of the next independent review determination regarding an individual, within the 60-day period.

If the "new" appeal is then upheld, the county's billing responsibility for an individual will end on the date the appeal was granted. If the "new" appeal is denied, the county's billing responsibility would continue for as long as the individual remains at the Center and there is no change in circumstances that would preclude or contra-indicate continued transition planning.

Delay in Billing Start Date or Request for Extension of Billing Period

The Department may delay the effective date of the \$48.00 a day charge back up to 60 calendar days (no additional extensions are allowed under administrative rule) for a person whose plan for community services has been approved by the Department, but is waiting implementation. The county agency must make this request including the reason(s) for the delay, in writing to the Administrator, Division of DESS, 1 West Wilson Street, Room 418, P.O. Box 7851, Madison, Wisconsin 53707-7851. *Note: special consideration may be given to situations in which a guardian has been newly appointed within the last year or other similar situations.*

Payment Process

No charges will be incurred by a county if a person is moved within 30 calendar days of the billing start date. No charges will be incurred by a county for the month in which a person moves to their community. Payment is due from the county agency within 60 calendar days of the billing date, subject to provisions of the contract between the Department and the county agency. The Department of Health and Family Services will begin billing the county in the amount of \$48 per day, as the specified charge back penalty if a county has not moved the individual into a community setting within the 180-day grace period.

If, within 60 calendar days of the receipt of the bill, the county has not forwarded to the Department a check in the amount billed, the Department will deduct the specified amount from the CARS funding that the State provides to the county in question. Billing will continue until such time as the individual is moved into the community or has estimated costs that rise above the available CIP1A rate, or the individual's health status changes significantly enough to warrant a delay in planning for community transitioning.

REGIONAL OFFICE CONTACTS:
Assistant Area Administrators

CENTRAL OFFICE CONTACTS:
Michael Linak
DDES/BLTS/Developmental Disabilities Services Section
(608) 266-1140

cc: BLTS-CIS Field Staff

MEMO WEB SITE: http://dhfs.wisconsin.gov/dsl_info/